UNITED NATIONS

LOS

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/SCN.4/L.18
9 December 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

Chairman's summary of discussions on the report with recommendations concerning the initial financing and budget of the Tribunal (LOS/PCN/SCN.4/WP.11)

1. During the summer meetings of the tenth session of the Preparatory Commission (New York, 10-21 August 1992), Special Commission 4 took up the issues concerning the initial financing and budget of the International Tribunal for the Law of the Sea, on the basis of a working paper prepared by the Secretariat (LOS/PCN/SCN.4/WP.11). Following its usual practice, the Special Commission decided to examine the document part by part.

2. Introducing the working paper, the Secretary stated that the document outlined, in general terms, alternatives as to how a new international body might be financed. The paper had been drafted taking into account the practice followed in the establishment of the United Nations, its agencies and bodies. However, it was to be borne in mind that the Tribunal was not an international organization with a constituent political body, but a judicial body. There was no known precedent for setting up such an international tribunal, independent of any umbrella organization. For those reasons, he pointed out, the document should be treated as an information paper indicating specifics relevant to the Tribunal. It would be up to the Meeting of States Parties to guide the Tribunal in this matter.

Introductory note and part I

3. There were no comments with respect to these parts of the paper, which proposed the division of the financing and budgetary recommendations into two sections, the first dealing with the preliminary requirements for the initial establishment and early functioning, and the second dealing with the permanent arrangements of a long-term nature.

4. It was generally felt that the document did not make recommendations. Since the subject was important, the Special Commission should formulate

recommendations since this would facilitate decision-making, bearing in mind that the Tribunal was, sui generis, independent and financially autonomous. One delegation indicated that the document should be such as to permit formulating clear recommendations to the Meeting of States Parties. The recommendations should take account of the fact that at the outset the workload would be light and that initially there would be no need for 21 judges in view of the financial burden of such an arrangement: thus there should be a phasing-in of the Tribunal, which should be reflected more precisely in part II of the working paper. What was needed was clear specifications and a comprehensive document.

Part II - Governing principles

5. One delegation inquired as to the meaning of the words "to be applied" in paragraph 5 of the document. The Secretary explained that when making arrangements for a new international body, the fiscal policy is formulated as governing principles and it is left to the body - in this instance the Tribunal - to work out the specifics. The governing principles should be formulated by the Meeting of States Parties. An analogy was drawn to the deliberations of the Special Commission concerning the phasing-in of the Tribunal (LOS/PCN/SCN.4/WP.8/Add.2). Another delegation expressed concern about the mandatory form of presentation, given its financial implications.

6. It was suggested that document LOS/PCN/SCN.4/WP.11 be expanded so that all budgetary questions regarding the Tribunal would be combined in one document that gave a comprehensive view on the financial implications of the Tribunal. The Chairman stated that such a task would not be possible owing to the lack of time. He explained that working papers LOS/PCN/SCN.4/WP.8 and Add.1 and 2 dealt with issues concerning the administration and consequential financial implications and budgeting, while LOS/PCN/SCN.4/WP.11 dealt with how money could be raised initially to finance the setting up of the Tribunal. It was agreed that a footnote or a cross-reference to documents LOS/PCN/SCN.4/WP.8 and Add.1 and 2 would take care of that concern.

7. The view was reiterated that LOS/PCN/SCN.4/WP.11 should make clear-cut and specific recommendations to the Meeting of States Parties. The discussions on the working paper should be reflected in the final report to the Preparatory Commission. Another view, expressed by the Chairman, was that the Preparatory Commission was in a position to suggest well-defined solutions based on juridical principles, but that in the present case under consideration, the problems were of a financial nature and thus were unpredictable, and therefore required a flexible approach in the solutions suggested.

8. A general remark was that the paper should also take account of the recent experience or practice of international jurisdictions and of regional bodies, such as the Tribunal of the Organization of Arab Petroleum Exporting Countries (OAPEC). It was agreed that reference should be made to such experience, as appropriate.

Part III - Provisional arrangements

9. There were no comments on part III.

Part IV - Working Capital Fund

10. There were no comments on part IV as well.

Part V - Alternative sources of initial funding

11. Some delegations were of the view that an individual State should not be responsible for the initial financing of the Tribunal, which was intended to be an independent and neutral institution. Therefore one delegation suggested the deletion of the reference in paragraph 14 that gives, as an example for an alternative source of initial financing, the example of the United Nations University, which was financed by an endowment from the host country. This example was considered misleading. Other delegations, however, insisted on keeping the example since it constituted an appropriate example of an alternative source of financing the Tribunal.

12. The Chairman offered the following sentence as a compromise: "Although the United Nations University is different from the Tribunal, it nevertheless constitutes a useful example." It was also suggested and agreed to look into the practice of the Permanent Court of International Justice (PCIJ), established under the League of Nations, for inclusion in the final report.*

Part VI - The Provisional Financial Regulations

13. One delegation was of the view that the drafting of the paragraph suggested that additional working papers would need to be prepared. Since this was inappropriate, owing to the lack of time, it was suggested to redraft the paragraph or to merge it with part III which dealt with the same issues. It was argued that the Commission could draft such regulations and that thus the document to be submitted to the Meeting of States Parties would be more comprehensive. Another delegation was of the view that the Special Commission could not draft financial regulations.

14. Since the present document is a summary of discussions, it is not possible to reflect each and every intervention fully or to reproduce suggested formulations. The Secretariat has maintained a complete record of all suggestions and these will be taken into account when redrafting the document. Should any participant feel that an important matter has been omitted, the Chairman would appreciate being so informed.

---

* Consequent upon the request of the Special Commission, the Chairman reviewed the results of the Secretariat's research on the experience of the PCIJ. For the convenience of delegations, a summary of that information is contained in the annex to the present report.

Annex

THE FINANCES OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE a/

1. Method of meeting the Court's expenses. When the plans for the establishment of the Court were being completed in 1920, the Court was regarded as an organ of the League of Nations. b/ This partly explains why its founders did not envisage any independent method for meeting the Court's expenses.

2. Since agencies had been created for collecting and disbursing the funds of the League of Nations, it would have entailed both duplication and difficulty in 1920 to have created an independent method of financing the Court; and the view that the Court was to be an organ of the League led quite naturally to the provision in Article 33 of the Statute that "the expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council" ... The provisions of the Statute do not place on a party to the Protocol of 16 December 1920 any obligation to contribute to the budget of the Court, and it is only under the decisions of the Assembly that States Members of the League of Nations are obligated to contribute. The obligation to contribute rested on all Members of the League of Nations, even if they were not parties to that Protocol. c/

3. The League of Nations budget for the Court. The annual budget of the League of Nations was divided into parts, one of which was the budget for the Court. This was voted by the Assembly of the League each year, for the following calendar year. Each Member of the League was obligated to contribute to this budget, whether or not it was a party to the Protocol of Signature of 16 December 1920. d/

4. Preliminary budget arrangements. The first two budgets of the League contained items to cover the expenses necessary for the establishment of the Court, e/ and the third budget, for 1921, adopted in 1920, included an item of 650,000 francs (later reduced to 500,000 francs) for the Court's expenses. f/ In the fourth budget, for 1922, the item was for 1,500,000 francs. As from 21 February 1922, the Court's services took over from the Secretariat of the League of Nations the accounts and the administration of funds placed to its credit at The Hague. g/, h/

5. Premises occupied by the Court. Each year the budget of the Court includes an item for meeting the expenses of the premises occupied by the Court, and the topic therefore calls for consideration in connection with the Court's finances. The existence of the Peace Palace at The Hague was one of the factors which led to the selection of The Hague as the seat of the Court. i/ That Palace was a gift by Andrew Carnegie to the Carnegie Foundation, a corporation organized under the laws of the Netherlands. Negotiations were begun in 1921 between the Secretary-General of the League of Nations and the President of the Board of Directors of the Carnegie Foundation, with a view to reaching an arrangement concerning the Court's occupancy of the Peace Palace. The arrangement provided for the Court's exclusive use of certain parts of the Peace Palace and the non-exclusive use of other parts, for which the League of Nations was to pay an annual sum of 50,000 florins. The arrangement was later extended and a

permanent arrangement was negotiated which became effective from 1924 with the annual contribution by the League of Nations being reduced to 40,000 florins. The space available to the Court under this arrangement was grossly inadequate, as it did not even admit of a separate office for each of the judges; and in 1927 a supplementary arrangement was negotiated to meet the needs of the Court more adequately. j/ Additional space was to be made available by a remodelling of parts of the Peace Palace, for the purpose of which the Netherlands Government advanced to the Foundation 240,000 florins as a loan without interest. To enable the Foundation to repay this loan, it was agreed that the League of Nations should pay the Foundation the additional sum of 10,000 florins each year from 1929 to 1952. The remodelling was completed in 1929. k/ The available space again proved to be inadequate when in 1930 the number of judges was increased from 11 to 15, and in 1929 negotiations were opened with a view to meeting the Court's new needs. A plan was approved after prolonged negotiations and put into effect on 1 December 1932, by a rider to the arrangement of 1924. l/ Under this plan, the Court was to have new space available, necessitating the removal of the Academy of International Law to a building to be constructed on the grounds of the Peace Palace. For this purpose, the Netherlands Government advanced 273,400 florins as a loan without interest, and this sum was to be repaid by the League of Nations to the Carnegie Foundation, in annual instalments of 10,000 florins payable until 1960. The budget of the Court for 1933 included an item of 60,000 florins for payment by the League of Nations to the Carnegie Foundation. m/ The cost of the premises occupied by the Court is an item in the independent budget of the Court, but the responsibility for the arrangements with the Carnegie Foundation rests with the Secretary-General of the League of Nations. In this respect, the Court has not assumed the independence which it enjoys in connection with other parts of its budget; n/ however, the negotiations on behalf of the Secretary-General are frequently conducted by the Registrar of the Court.

Notes

a/ Extracted from The Permanent Court of International Justice, A Treatise, by Manley O. Hudson (New York, Macmillan, 1934), pp. 297-312.

b/ See ibid., para. 98.

c/ Ibid., para. 352.

d/ Ibid., para. 353.

e/ Records of First Assembly, Committees, II, pp. 106, 107, 118.

f/ Records of First Assembly, Plenary, p. 707. The Council had previously approved a memorandum by the Secretary-General which proposed an item of 1,500,000 francs for the Court. Ibid., Committees, II, p. 122.

g/ Ibid., Series E. No. 1, p. 279.

h/ The Permanent Court ... (see note a above), para. 355.

i/ It is referred to in the report of the 1920 Committee of Jurists, Minutes, p. 718.

j/ Records of First ... (see note e above), Series E, No. 4, pp. 63-67.

k/ Ibid., No. 5, pp. 78-80.

l/ Ibid., No. 9, pp. 48 ff.

m/ League of Nations Official Journal, 1932, p. 1669.

n/ Chattels used by the Court, such as furniture and office equipment, seem to be the property of the League of Nations. The question has been mooted whether the Court has a juridical personality, enabling it to hold, lease and transfer property; but it seems quite unimportant for all practical purposes.